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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 CONRAD BRAUN, on behalf of himself
12 and all other similarly situated
California residents,

13 Plaintiff,

14 vs.

15 SAVEOLOGY.COM, LLC, a Florida
16 Corporation, and ELEPHANT GROUP,
INC., a Delaware Corporation,

17 Defendants.
18

CASE NO. 12cv85-JLS (MDD)

ORDER DENYING PLAINTIFF'S
EX PARTE MOTION FOR
EXPEDITED DISCOVERY
REGARDING SETTLEMENT
DISCUSSIONS IN AN
ALLEGEDLY RELATED CASE

[ECF No. 33]

19 On August 30, 2012, Plaintiff filed an *ex parte* motion seeking an Order
20 authorizing expedited discovery of settlement discussions in an allegedly related
21 class action pending in the Northern District of Illinois. (ECF No. 33). Plaintiff
22 complains that the Illinois case should have been disclosed pursuant to Fed.R.Civ.P.
23 26. Plaintiff also asserts that Defendants should have notified Plaintiff and filed a
24 related case notice under this Court's Civil Local Rule 40.1(f). (*Id.*).

25 Plaintiff's motion does not bring before the Court a discovery or other
26 justiciable dispute with Defendants. Plaintiff, it appears, has not sought discovery
27 regarding the allegedly related case resulting in objections by Defendants. Unless
28 and until discovery is sought and objections are interposed, there is nothing for this

1 Court to decide. In the event a discovery dispute develops, the parties are referred to
2 this Court's Civil Chambers Rules regarding the appropriate manner to proceed.

3 Plaintiff's assertion that the Illinois litigation should have been disclosed as
4 part of Defendants' initial disclosures under Fed.R.Civ.P. 26(a) is not properly before
5 the Court. It is not entirely clear that Rule 26(a) requires this disclosure. Even if it
6 did, Defendants are under a duty to supplement their disclosures in a timely manner
7 as required by Rule 26(e). If a party fails to disclose or timely supplement a
8 disclosure, the matter may be brought before the Court as a discovery dispute as
9 provided in the Court's Civil Chambers Rules. Such a motion is not before the Court
10 at this time.

11 Civil Local Rule 40.1 imposes on counsel the obligation to disclose to all parties
12 related cases, as defined in Civ.L.R 40.1(g), and to file with the Court a notice of
13 related case. *Id.* at 40.1(f). That obligation is not limited to any particular party.
14 The case pending in the Northern District of Illinois involves a different Plaintiff and
15 a different Defendant. Elephant Group, Inc., a co-defendant in this case, allegedly is
16 a counterclaim defendant in the other case. Plaintiff alleges that the factual and
17 legal issues are similar enough to require disclosure and notice. To the extent
18 counsel for Plaintiff reasonably believes that the other case is related, the obligation
19 of disclosure and notice falls to Plaintiff.

20 The violations alleged by Plaintiff do not present a controversy to be decided by
21 the Court. Even if the alleged violations were proved, it is unclear that allowing
22 Plaintiff to discover or participate in settlement proceedings in another case, related
23 or not, would be an appropriate remedy.

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1 Accordingly, Plaintiff's motion is DENIED.

2 IT IS SO ORDERED.

3 DATED: August 31, 2012

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5 Hon. Mitchell D. Dembin
6 U.S. Magistrate Judge
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